

AMERICAN ARBITRATION ASSOCIATION

In the Matter of the Arbitration

Docket #14390-00467-08

Between

Re: Joseph P. Murray - Suspension

CITY OF PHILADELPHIA,

"City"

Hearing: August 31, 2011

-and-

F.O.P., LODGE NO. 5,

"Union"

APPEARANCES

For the City:

Sharon Glogowski, Esq.

For the Union:

JENNINGS SIGMOND, P.C.

Marc L. Gelman, Esq.

BACKGROUND

Detective J. Murray was issued a 15-days suspension on January 9, 2009 for "making a false statement" while testifying, and for doing so in an official departmental investigation. The Union asserts Murray is not guilty of those offenses. It asks that he be made whole and that his record be expunged.

Murray's service with the City's Police Department dates from January 2000. He was assigned to the Narcotics Strike Force in 2002. In February 2004, he was a member of the "A" Platoon. His regular partner was P.O. J. G [REDACTED]. Part of his regular duty was to have confidential informants ("CIs") induce drug sellers to meet them, at which time Narcotics officers would arrest the dealer.

The event which led to this case occurred on February 20, 2004. Murray testified as follows: He and his partner used a woman ("K [REDACTED]") as a CI. In exchange for not being arrested, she offered to set up a dealer, J. W [REDACTED] (a/k/a "S [REDACTED]"). They met with her at the Lincoln High School in northeast Philadelphia. Murray directed her to call W [REDACTED] on a cell phone, to order three "bundles" of crack cocaine, and to meet her at a McDonald's located at Roosevelt Boulevard and Cottman Avenue at 2:00 p.m. (He "thinks" she used his cell phone, not her own.) Murray and G [REDACTED] listened in on her conversation with W [REDACTED].

When W [REDACTED] arrived at the McDonald's, Murray and other members of the Strike Force were waiting for him. He arrived at 2:00 p.m. K [REDACTED] identified him. He was arrested.

The arrest led to a preliminary hearing at the Criminal Justice Center on March 25, 2004. Murray testified as to the events of February 2, 2004. Sometime thereafter, W [REDACTED] case was taken over by the U.S. Attorney's Office.* At one point, Murray's cell phone records were subpoenaed. When they were examined, they did not reflect that a call had been made to W [REDACTED] around 2:00 p.m. on February 2, 2004. (In fact, his records show a gap between 9:43 a.m. and 4:29 p.m., a period in which no calls were recorded having been made.) The prosecutors, as a result, concluded that Murray had provided false testimony at the March 25, 2004 preliminary hearing. They withdrew the charges against W [REDACTED], on the belief that without a record of the call, no probable cause existed for W [REDACTED] arrest.

When the City learned of this, it initiated its own investigation. Murray was interviewed by Internal Affairs on August 3, 2006. (By then, he had been promoted to Detective.) Murray did not change his version of the events of February 2, 2004. The Department subsequently concluded he had made "false statements" at both the preliminary hearing and the Internal Affairs investigation.

* The reason has no relevance here.

It issued him a 15-days suspension for violating Sections 1.12 and 1.15 of the Department's Disciplinary Code.

The instant grievance was filed to challenge the suspension. Failure to resolve it led to this dispute.

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DISCUSSION & FINDINGS

The Issue:

The issue here, as stipulated at the August 31, 2011 hearing, is whether the City had just cause to suspend Murray for 15 days.

Positions of the Parties

The City's position here is straight-forward. Its basic contention is that Murray gave false testimony at W [REDACTED] preliminary hearing and repeated it at the Internal Affairs interview. It relies heavily upon the fact his cell phone records simply do not show a call was made to W [REDACTED] on February 2, 2004. It was, accordingly, false for him to testify that one was made. In fact, it notes, a review of his partner's cell phone record for February 2, 2004 also revealed no call was made that day to W [REDACTED] Murray, in short, lied. It insists the suspension issued was justified. It asks that it be sustained.

The Union, for its part, insists the City has not met its burden of proof here. It relies upon Murray's version of the events of February 2, 2004. He was, it believes, a completely credible witness. This charge is the only blemish on his record. At the very least, he is entitled to the benefit of any doubt. It asks, accordingly, that he be made whole and his record expunged.

Opinion:

This much is beyond dispute: the charges against Murray are serious. In effect, they accuse him of having lied under oath. That equates to destroying his credibility. He is no longer regarded as a reliable witness. He cannot be called to testify.

Thus, this case is less about restoring 15 days' pay to Murray than it is about restoring his reputation.

The City, to be sure, carries the burden of proof here. Its responsibility is to establish through the preponderance of evidence that Murray is guilty as charged. In my judgment, the City has failed to satisfy that burden. My reasons follow.

To begin with, there was only one witness who testified as to the events of February 2, 2004: Murray. The CI did not testify. G [REDACTED] did not testify. (He has since retired.) Therefore, Murray's credibility is crucial to a finding of what occurred that day.

I found Murray's testimony to be clear, consistent and convincing. At no point did I find him to be stretching the facts to his own favor. I conclude that he was perfectly credible. I accept his version of the events.

It is true that his cell phone records do not show that a call was made to W [REDACTED] at around 2:00 p.m. There are several possible explanations for that.

For one thing, K [REDACTED] might have made the call from her own cell phone. (No evidence of her phone records was introduced.) For another, the telephone company's equipment made have malfunctioned. After all, it is highly unlikely that Murray did not use his cell phone at all for over six hours on February 2, 2004. Moreover, there are "tower" records available that might have shown usage. But they were never secured or introduced.

In short, I am disinclined to treat the mere absence of a record of a call as positive proof it was not made. After all, there is no disputing the fact W [REDACTED] appeared at the site (i.e., McDonald's) at the time specified carrying three bundles of crack cocaine. That fact strongly supports Murray's testimony.

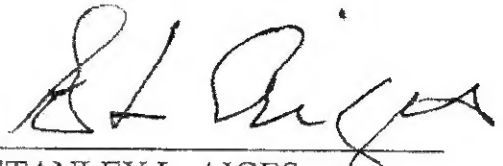
All things considered, I am persuaded that the City erred here. I direct it, therefore, to make Murray whole and to expunge the incident from any and all (including Internal Affairs) records.

* * *

AWARD

The City lacked just cause to suspend J. Murray. Relief is granted per the foregoing.

DATED: September 13, 2011


STANLEY L. AIGES

AFFIRMATION

I, STANLEY L. AIGES, do hereby affirm upon my oath as Arbitrator that I am the individual who executed this instrument, which is my Award.


STANLEY L. AIGES